UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RONARD LORA, HUGO RIVERA, MARCO ANTONIO DIAZ, MELVIN LORA, EDUARDO LORA, GIOVANNI PAULINO, JOSE RODRIGUEZ, and JOSE RODOLFO RODRIGUEZ-TINEO, individually and on behalf of all others similarly situated,	Index No. 11-CV-9010 (LLS)
Plaintiffs,	ECF CASE
	CLASS ACTION
- against -	Civil Action
J.V. CAR WASH, LTD., BROADWAY HAND CARWASH CORP., WEBSTER HAND CAR WASH CORP., HARLEM HAND CAR WASH INC., BAYWAY HAND CAR WASH CORP., JOSE VAZQUEZ, SATURNINO VARGAS, JOSE JIMENEZ, RAMON PEREZ, DOMINGO "DOE," ADOLFO FEDERUS, originally sued as ADOLFO "DOE," and JOHN DOES 1-10,	
Defendants.	

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS

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I. PRELIMINARY STATEMENT

The Named Plaintiffs Ronard Lora, Hugo Rivera, Marcos Antonio Diaz, Melvin Lora, Eduardo Lora, Giovanni Paulino, Jose Rodriguez and Jose Rodolfo Rodriguez-Tineo, as well as the Opt-In Plaintiffs Ramon M. Alvarez Carrion, Denis Rene Barahona, Margarito Gallardo, Braulio Flores Matamoros, Robertico Perez Olmos, Jose Antonio Pichardo, Michel Rodriguez, Francisco Guerrero, Rojas Corona Valerio and Ramiro Rodriguez del Pilar (collectively, the "Plaintiffs"), through their counsel Arenson Dittmar & Karban ("ADK"), make this application for an award of statutory attorneys' fees and costs, pursuant to Section 216(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), and Section 198(1-a) of the New York Labor Law ("NYLL"), N.Y. LAB. L. § 198(1-a), in connection with the settlement of this action (the "FLSA Action").[1]

After more than three years of litigation, before this Court and the United States Bankruptcy Court for the District of New Jersey, shortly before trial, ADK negotiated a $1,650,000 settlement on behalf of these eighteen former car wash employees at a settlement conference conducted by the Honorable Andrew J. Peck, U.S.M.J., on December 23, 2014. The Plaintiffs thus qualify as "prevailing parties" under that settlement. The total gross recovery per Plaintiff averages $91,666.67, with four Plaintiffs receiving over $150,000, another five Plaintiffs over $100,000, another five Plaintiffs between $50,000 and $99,000, two Plaintiffs between $25,000 and $49,000 and two Plaintiffs between$3,800 and $20,000.

In order to achieve this result, ADK fended off Defendants' aggressive litigation tactics at every turn of the case – which include frivolous defenses, retaliatory terminations of the

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1 All capitalized terms not otherwise defined in this Memorandum shall have the meanings set forth in the Declaration of Laura E. Longobardi, Esq., in Support of Application for Attorneys' Fees and Cost, dated March 30, 2015 (the "Longobardi Declaration" or "Longobardi Decl.").

Plaintiffs, violations of the discovery process, multiple changes of attorneys, an unsupportable motion to dismiss the Complaint, repeated failures to appear for depositions, baseless allegations of witness tampering, bankruptcy proceedings and assertions of Mr. Vazquez's mental incompetency – all intended to derail the prosecution of this FLSA Action. ADK also obtained supportive declarations from 21 non-party witnesses; analyzed volumes of hard copies of quarterly payroll tax returns; defended the depositions of 18 Plaintiffs on two separate occasions; took the depositions of Mr. Vazquez, of the Defendants' accountant, and of Mr. Vazquez's treating psychiatrist; filed multiple substantive motions in the Bankruptcy Court; prepared the draft of the joint pre-trial order; and began preparations of witnesses and evidence for what would have been a multi-week trial.

Had the Defendants not engaged in the obstreperous conduct outlined above, and as stated in detail in the accompanying Longobardi Declaration, this case could have been resolved years ago. Instead, Defendants' conduct only served to increase the amount of time and expense that Plaintiffs' counsel had to devote to this case.

Although we believe that Plaintiffs are entitled to recover fees for all of the time that their attorneys spent on this FLSA Action, ADK has voluntarily reduced the total amount of its time and fees on this matter by more than eight percent (8%). As explained in more detail below, Plaintiffs seek only $1,404,456.23 of ADK's actual $1,535,962.43 in fees, as well as $113,594.85 in actual out-of-pocket costs and disbursements.[2]

II. FACTUAL AND PROCEDURAL BACKGROUND

The factual and procedural background of this FLSA Action is set forth in detail in the accompanying Longobardi Declaration, and will not be repeated here. We respectfully refer the

[2] ADK's contemporaneous billing statements in support of its attorneys' fees and costs are attached to the Longobardi Declaration as Exhibits A and B.

Court to the Longobardi Declaration for a full statement of the factual and procedural history of this case.

III. ARGUMENT

A. Plaintiffs Are Entitled to an Award of Attorneys' Fees and Costs.

The FLSA and the NYLL provide for recovery of reasonable attorneys' fees and out-of-pocket costs by prevailing plaintiffs. 29 U.S.C. § 216(b); N.Y. LAB. L. §§ 198(1-a), 198(1-d), 663(1). Here, as a result of the settlement, Plaintiffs are considered to have "prevailed" over the Defendants, and thus are entitled to reasonable attorneys' fees and costs expended as a result of litigating this FLSA Action. *See Allende v. Unitech Design, Inc.*, 783 F. Supp. 2d 509, 510-11 (S.D.N.Y. 2011) (plaintiffs who settled claims under the FLSA and the NYLL entitled to statutory awards of attorneys' fees and costs).

Accordingly, as the Plaintiffs are "prevailing" plaintiffs within the meaning of the FLSA and the NYLL, Plaintiff's counsel are entitled to an award of attorneys' fees and costs.

B. Plaintiffs' Request for Attorneys' Fees Is Reasonable.

The Court should grant Plaintiffs' request for $1,404,456.23 in attorneys' fees, a discount of more than 8%from their actual "lodestar" amount of $1,535,962.43.

Under the case law in the Second Circuit, an attorney's "lodestar" fees, which are calculated by multiplying that lawyer's reasonable hourly rate by the number of hours reasonably expended on a case, are presumptively reasonable. *See Perdue v. Kenny A.*, 559 U.S. 542, 546 (2010); *see also Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 522 F.3d 182, 190 (2d Cir. 2008) (adopting the "presumptively reasonable fee" terminology). Here, Plaintiffs' lodestar is reasonable because it was calculated by multiplying the reasonable number of hours worked (which were contemporaneously recorded) by the actual current hourly rates that ADK charges paying clients for each timekeeper's work. Plaintiffs' more than 8% voluntary reduction also weighs heavily in favor of granting their request in its entirety, because it accounts for any possible duplicative billing or excess time. *See Allende*, 783 F. Supp. 2d at 515 (reducing requested fee award in wage and hour case by 7% and collecting cases with similar reductions between 5 and 10%).

1. Plaintiffs Achieved a High Level of Success.

Plaintiffs achieved a high level of success in this case. Declaration of Samuel Estreicher, dated March 30, 2015 (the "Estreicher Decl."), ¶ 7; Declaration of Lloyd R. Ambinder, ¶ 11 (the "Ambinder Decl."). Plaintiffs obtained a settlement of $1.65 million, achieving an average per plaintiff award that exceeds greatly the amounts obtained in many other class or collective action settlements in wage-hour cases. Estreicher Decl., ¶ 7. All of the Plaintiffs approved of the settlement.

Further, non-monetary benefits have been conferred on workers at the Defendant Car Washes. As a result of the Plaintiffs' efforts in the Defendants' bankruptcy proceedings, a Chapter 11 Trustee was appointed for all of the Car Wash Defendants. That Chapter 11 Trustee now has transformed the payroll practices of those businesses. Instead of simply paying their employees cash in an envelope, without regard for whether the employees were receiving proper amounts for minimum wages, overtime payments and/or spread-of-hour wages (and without making necessary deductions for taxes and other withholdings), the Car Wash Defendants now are paying their current employees through payroll checks, with all deductions. All of these current employees also are receiving proper amounts for their wages. These wholesale changes in the payment practices of the Car Wash Defendants would not have happened had the Plaintiffs not commenced this FLSA Action, and zealously pursued the prosecution of this case to this conclusion. The Plaintiffs thus have succeeded in obtaining a public benefit by virtue of this FLSA Action. *See* Declaration of Barry Goldstein, Esq., dated March 24, 2015 (the "Goldstein Decl."), ¶ 19; Estreicher Decl., ¶ 7.[3]

2. Plaintiffs' Counsel Expended a Reasonable Amount of Time

a. **Plaintiffs Prosecuted the Case Efficiently.**

ADK made conscious efforts to prosecute the case in a way that would minimize fees, by dividing the labor of the FLSA Action between Mr. Arenson and Ms. Longobardi. Mr. Arenson handled most of the contact with the Plaintiffs, which included conducting initial interviews, answering frequent questions regarding the status of the case, meeting with the Plaintiffs to prepare them for depositions, and defending their depositions. Mr. Arenson also was primarily responsible for tasks relating to the IME of Mr. Vazquez, such as conferring with Dr. Stuart Kleinman, who performed the IME, taking the deposition of Dr. Valbrun, Mr. Vazquez's treating psychiatrist, and reviewing Mr. Vazquez's medical records. *See* Declaration of Steven Arenson, Esq., dated March 30, 2015 ("Arenson Decl."), ¶ 14. Ms. Longobardi drafted most of the Plaintiffs' pleadings, discovery demands and responses, motions and other papers in this case. She also was responsible for the depositions of Mr. Vazquez and of his accountant. Ms. Longobardi worked on the draft of the pre-trial order while Mr. Arenson met with Plaintiffs to confirm information. While Mr. Arenson outlined proposed direct examinations for the Plaintiffs at trial, Ms. Longobardi worked on trial briefs and anticipated *in limine* motions. *See* Longobardi Decl., ¶¶ 228-33.

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3 Plaintiffs believe that under the circumstances of this FLSA Action – the high degree of success achieved and the Defendants' vexatious conduct – a multiplier is appropriate. *See Perdue*, 559 U.S. at 555 ("an enhancement may be appropriate where an attorney assumes … costs in the face of unanticipated delay, particularly where the delay is unjustifiably caused by the defense"). However, Plaintiffs decline to seek a multiplier (which would increase the total amount of Plaintiffs' award of attorneys' fees), and instead ask this Court to grant the full amount of the award sought by this application.

Use of two attorneys on this case was eminently reasonable and sensible. This is customary and reasonable in a case of this complexity, duration, and litigiousness, especially because special expertise is required for some tasks and because of the sheer volume of the workload that this matter entailed. *See N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1146 (2d Cir. 1983) (affirming district court determination that plaintiffs' use of multiple counsel was appropriate in light of the complexity of the litigation).

The Court should reject the argument that Plaintiffs should not be compensated for the time spent by lawyers conferring and strategizing because, given Plaintiffs' reasonable collaborative approach, such conferences made the litigation more efficient, not less. (Estreicher Decl., ¶ 10); *see also Harrington Haley LLP v. Nutmeg Ins. Co*., 39 F. Supp. 2d 403,411 (S.D.N.Y. 1999) ("Any joint endeavor requires communication among those involved to ensure that everyone is working toward the same objective, that two people do not independently do the same thing twice .... no one reasonably could suggest that the time spent by, for example, General Eisenhower and his officers discussing the invasion of Europe was not time reasonably devoted to the war effort and the national interest.").

b. **Plaintiffs' Voluntary Reductions.**

Moreover, Plaintiffs have voluntarily reduced their hours in four significant ways:

- On those occasions when both attorneys attended a conference, hearing or a deposition, only one attorney billed for his/her time; also, there were times when either Mr. Arenson or Ms. Longobardi would not bill the time spent on a particular meeting, task or conference;
- attorney time and paralegal time that might arguably be either excessive or non-billable was eliminated;

- work by an attorney that was more suitably done by a paralegal assistant was billed at the paralegal rate of $125 per hour; and
- time spent travelling for conferences and/or meetings were billed at half the regular hourly rate ($250.00 per hour for attorneys, and $62.50 per hour for paralegals).

Longobardi Decl., ¶¶ 228-236; Estreicher Decl., ¶ 10.

Plaintiffs' voluntary across-the-board reduction more than compensates for any unnecessary time. *See Allende*, 783 F. Supp. 2d at 515

c. **Defendants' Conduct Made This Case Costly**

A major reason that Plaintiffs expended over 3,000 attorney and paralegal hours in this case is directly attributable to Defendants' conduct. (Longobardi Decl., ¶¶ 7-13; Arenson Decl., ¶¶ 12, 15-22, 49.) Defendants took almost every aggressive position they could have taken – even when frivolous or unreasonable. Much of this conduct likely took little of Defendants' time, but caused Plaintiffs to expend significant resources responding responsibly. (*See, e.g.*, Arenson Decl., ¶ 50.)

Courts should compensate Plaintiffs for meeting and responding to an aggressive defense. As the Second Circuit recently observed in *Torres v. Gristede's Operating Corp.*, 519 F. App'x 1 (2d Cir. 2013), it was reasonable to conclude that a defendant's "range of obstreperous behavior" which added to the cost of litigation also would increase the attorneys' fees incurred by the plaintiffs (quoting *Kassim v. City of Schenectady*, 415 F.3d 246, 252 (2d Cir. 2005) ("hours required to litigate even a simple matter can expand enormously" where "attorney is compelled to defend against frivolous motions and to make motions to compel [discovery] compliance")); *see also Kahlil v. Original Old Homestead Rest., Inc.*, 657 F. Supp. 2d 470, 478 (S.D.N.Y. 2009) (refusing to reduce fees where "opposing counsel wages a tenacious defense which expands the time required to pursue even straightforward claims"). Clearly, a defendant "cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." *City of Riverside v. Rivera*, 477 U.S. 561, 580 n.11 (1986) (quoting *Copeland v. Marshall*, 641 F.2d 880, 904 (D.C. Cir. 1980)). This is especially so here, where Plaintiffs repeatedly warned Defendants that their conduct was multiplying fees. (Arenson Decl., ¶¶ 15, 20-21.)

Likewise, Defendants' unwillingness to make a reasonable settlement offer until after several trial dates had been scheduled and adjourned (because of the Defendants' conduct) should not be rewarded. *See Barbour v. City of White Plains*, 788 F. Supp. 2d 216, 224-25 (S.D.N.Y. 2011) ("Defendants could have avoided liability for the bulk of the attorney's fees … by making a reasonable settlement offer in a timely manner") (quoting *City of Riverside*, 477 U.S. at 580 n.11).

ADK spent almost three years litigating this case without any compensation. During this time, ADK communicated regularly with the Plaintiffs; served and responded to discovery; reviewed Defendants' voluminous document productions (once those productions were finally made); conducted the depositions of Mr. Vazquez, his accountant and his treating psychiatrist; defended the depositions of all eighteen Plaintiffs on two separate occasions; appeared for 23 court conferences, both in this Court and in the Bankruptcy Court; engaged in motion practice both in this Court and in the Bankruptcy Court, attended a lengthy but unsuccessful mediation session before JAMS-ADR; attended another unsuccessful settlement conference with Mr. Vazquez and his counsel; attended a third unsuccessful settlement conference with the Chapter

11 Trustees and their counsel; and finally, attended the settlement conference at which Magistrate Judge Peck was able to broker the successful settlement of this FLSA action.

"In determining the reasonableness of the fees requested…it is especially pertinent to note here that 'in litigating a matter, an attorney is in part reacting to forces beyond the attorney's control, particularly the conduct of opposing counsel …'" *Linde v. Arab Bank, PLC*, 293 F.R.D. 138, 142 (2013) (quoting *Kassim*, 415 F.3d at 252).

By way of example only:

- Plaintiffs' counsel had to spend time interviewing, and obtaining statements from, 21 third-party witnesses to rebut Defendants' assertions that none of the Plaintiffs worked for the Defendants;
- Plaintiffs' counsel had to litigate in the Bankruptcy Court in New Jersey to lift the stay on litigation, to protect the Plaintiffs' rights from being prejudiced in those bankruptcy proceedings, and to advance the Plaintiffs' interests as creditors of the Defendants;
- Plaintiffs' counsel had to devote considerable time and money to address Mr. Vazquez's claim that he was unable to participate in litigation due to his bipolar disorder;[4]
- Plaintiffs' counsel had to spend time chasing Defendants, and their counsel, for documents, deposition dates, mediation dates, re-deposition dates, and the like.

[4] Between April 2014 and August 2014, Plaintiffs' counsel expended $41,400 on the independent medical examination conducted by Stuart Kleinman, M.D.; deposed Mr. Vazquez's psychiatrist; and reviewed over 1,200 pages of medical records pertaining to Mr. Vazquez, all in an effort to keep this case on track and avoid an extended delay due to Mr. Vazquez's claimed incapacity.

Having caused the conduct that compelled Plaintiffs' counsel to react, Defendants cannot now balk at the number of hours ADK was reasonably required to spend to competently litigate this matter.

3. Arenson Dittmar & Karban's Requested Hourly Rates Are Reasonable,

The hourly rates that Plaintiffs request are reasonable and appropriate. Courts select an hourly rate by determining what a "reasonable, paying client would be willing to pay." Arbor Hill, 522 F.3d at 184. Rates must be consistent with the prevailing rates in the relevant geographic area for "lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 & n.11 (1984). Courts must consider "all of the case-specific variables that [have been] identified as relevant to the reasonableness of attorney's fees in setting a reasonable hourly rate," including the factors enunciated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). *See* Arbor Hill, 522 F.3d at 190. The *Johnson* factors are:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney's customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Arbor Hill, 522 F.3d at 186 n.3 (quoting *Johnson*, 488 F.2d at 717–19).

Courts also frequently consider previous awards to the individual counsel seeking fees. Each of these factors support Plaintiffs' requested rates.

a. **Plaintiffs' Counsel Have Significant Experience, a Strong Reputation, and Proven Ability to Successfully Prosecute Wage and Hour Cases**

ADK has substantial experience prosecuting wage and hour class and collective actions and enjoys an excellent reputation in the field of employment law. (Estreicher Decl., ¶¶ 6, 9; Goldstein Decl., ¶¶ 14-16; Declaration of Stephen M. Orlofsky, dated February 23, 2105 (the "Orlofsky Decl."), ¶ 9-12; Declaration of Debra L. Raskin (the "Raskin Decl."), ¶¶ 9-11, 13, 15).

As set forth in the Longobardi Declaration, both Ms. Longobardi and Mr. Arenson are highly skilled attorneys, each having over twenty-eight years of experience as litigators. Both possess stellar academic credentials. Both have clerked for a federal district court judge. Both have practiced law at notable New York law firms. Ms. Longobardi, who was a partner at the firm of Reid & Priest LLP and its successor firm, Thelen Reid & Priest LLP, has an extensive background in general commercial litigation, as well as in employment law. In addition to his experience in civil rights, discrimination, harassment and wage cases on behalf of plaintiffs, Mr. Arenson has worked on complex corporate litigation as an associate at Paul, Weiss, Rifkind, Wharton & Garrison, has taught constitutional law at Yale College and the University of Miami Law School, and has lectured on employment issues at New York University School of Law, Cardozo Law School and New York Law School. *See* Arenson Decl., ¶¶ 4-5; Longobardi Declaration, ¶¶ 242-44, and Exhibit C.

The skill and experience of both Mr. Arenson and Ms. Longobardi support their requested hourly rates of $500 per hour.

b. **Plaintiffs' Counsel Charges Clients the Hourly Rates They Seek.**

Plaintiffs should recover fees at the rates that their counsel actually charge paying clients. *See Arbor Hill*, 522 F.3d at 184 (in setting the reasonable hourly rate, the district court should consider "what a reasonable, paying client would be willing to pay"). The "usual hourly billing rates charged to paying clients ... are reasonable rates of compensation for their work in this action." *Meriwether v. Coughlin*, 727 F. Supp. 823, 831 (S.D.N.Y. 1989). Even "lawyers who fetch above-average rates are presumptively entitled to them, rather than to some rate devised by the court," because "[l]awyers do not come from cookie cutters." *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993) (Easterbrook, J.); *see also Tamazzoli v. Sheedy*, 804 F.2d 93, 98 (7th Cir. 1986) ("For private counsel with fee-paying clients, the best evidence is the hourly rate customarily charged by counsel or by her law firm.").

Courts in this district give great weight to counsel's actual hourly rates. *See Rozell v. Ross-Holst*, 576 F. Supp. 2d 527, 544 (S.D.N.Y. 2008) (finding that actual rates charged to clients is "strong evidence of what the market will bear"); *Lilly v. County of Orange*, 910 F. Supp. 945, 949 (S.D.N.Y. 1996) (finding that the "actual rate that counsel can command in the market place is evidence of the prevailing market rate").

Here, Plaintiffs' counsel bill their clients at the rates sought here and their clients regularly accept and pay those rates. (Longobardi Decl., Exh. D.). *See Norwest Fin., Inc. v. Fernandez*, 121 F. Supp. 2d 258, 262-63 (S.D.N.Y. 2000) (rejecting challenge to reasonableness of fee request where counsel provided declaration indicating that client was "billed on the basis of services provided at fixed hourly rates which were charged at [counsel's] usual and customary rates"). When the firm's resources and attorney time are tied up in cases like this one, it is difficult to take on new cases. (Arenson Decl., ¶ 52.) By dedicating resources and attorney time to this case, ADK bore risk and suffered delay. (Arenson Decl., ¶¶ 41-48.)

c. **Awards in Similar Cases and Market Rates in the SDNY Support Plaintiffs' Requested Rates**

ADK's rates are also on par with other highly specialized and experienced attorneys who represent plaintiffs in employment and civil rights litigations in the Southern District of New York, and who typically are awarded hourly rates of between $450 and $625 per hour. *See Kim v. Kum Gang, Inc.*, No. 12 Civ. 6344 (MHD), 2014 WL 2514705, at *2 (S.D.N.Y. Jun. 2, 2014) (awarding $600 per hour (reduced from $1,000 per hour) as the rate a paying client would be willing to pay for an experienced senior litigator in a civil rights case); *Asare v. Change Group of N.Y., Inc.*, No. 12 Civ. 3371 (CM), 2013 WL 6144764, *19 (S.D.N.Y. Nov. 18, 2013) (Judge McMahon approving rates of $750 per hour for partner time; $300 to $500 per hour for associates and $150 per hour for paralegal/staff time); *DeCurtis v. Upward Bound Intern., Inc.*, No. 09 Civ. 5378 (RJS), 2011 WL 4549412, at *7-*8 (S.D.N.Y Sept. 27, 2011) (finding rate of $550 per hour reasonable for a partner with sixteen years of experience handling employment law cases in 2011); *Barbour v. City of White Plains*, 788 F. Supp. 2d 216, 225-26 (S.D.N.Y. 2011) (awarding hourly rate of $625 per hour to a solo practitioner with 27 years of experience in 2011, including extensive experience as a civil rights litigator, and $450 per hour to co-counsel with 22 years of experience in 2011), *aff'd,* 700 F.3d 631 (2d Cir. 2012), *later proceeding Barbour v. City of White Plains*, No. 07 Civ. 3014 (RPP), 2013 WL 5526234, at *8-*10 (S.D.N.Y. Oct. 7, 2013) (confirming hourly rates of $625 per hour and $450 per hour on attorneys' motion for post-judgment fees); *Adorno v. Port Auth. of N.Y. & N.J.*, 685 F. Supp. 2d 507, 513-14 (S.D.N.Y. 2010) (awarding $550 per hour to plaintiff's lead counsel with over thirty years of experience in employment law in 2010, and $500 per hour to slightly less-experienced co-counsel); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 589 (S.D.N.Y. 2008) (noting that partner hourly rates of $700 to $750 "fall within the norm of the rates charged by those attorneys' common adversaries in the defense bar"); *Rozell v. Ross-Holst*, 576 F. Supp. 2d 527, 546 (S.D.N.Y 2008) (awarding $600 per hour to partners and counsel with well over thirty-five years of experience, and $125 per hour for paralegals; *In re Independent Energy Holdings PLC*, No. 00 Civ. 6689 (SAS), 2003 WL 22244676, *9 (S.D.N.Y. 2003) (noting that rates of$650 per hour for a partner and $300 to $425 per hour for associates is "not extraordinary for a topflight New York City law firm").

These rates are in line with rates charged by other lawyers who represent plaintiffs. (Raskin Decl., ¶ 12 (rates ranging from $550-$750 for partners and senior counsel, and $275-$400 for associates); Estreicher Decl., ¶ 9 (rate of $500-$700 for partners).

d. **Previous Awards to Counsel Support Their Requested Rates**

We have resorted to fee applications on two prior occasions, both of which resulted in awards to ADK at our requested rates. Two years ago, Judge Gardephe approved the hourly rates of ADK partners and counsel at $500 per hour, and paralegals at $125.00 per hour. *Sandoval, et al., v. Galaxy Gen. Contr. Corp., et al.*, No. 10-CV-5771 (S.D.N.Y. Aug. 23, 2013). More recently, Special Referee Helewitz of the New York County Supreme Court found that ADK's hourly rate for partners and counsel of $500 per hour was reasonable based on the attorneys' experience and background and commensurate with similar hourly fees for similar work in New York City, and recommended an award of entire amount of attorneys' fees that we requested. *Schwartz, et al., v. Outside Ventures, LLC, et al.,* No. 153506/2013, NYSCEF Doc. No. 29 (Sup. Ct., N.Y. County Mar. 11, 2015).

e. **Current Rates Are Appropriate.**

The Court should apply ADK's current rates to all the time spent prosecuting this case because current rates (not historic rates) are necessary to compensate counsel for the passage of time. *See Konits v. Valley Stream Cent. High Sch. Dist.*, 350 F. App'x 501, 505 n.2 (2d Cir. 2009) (reprimanding district court for use of historic rates instead of current rates); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) ("current rates, rather than historical rates, should be applied in order to compensate for the delay in payment"). Courts should not use historical rates because doing so "may convert an otherwise reasonable fee into an unreasonably low one." *Johnson v. University Coll. of Univ. of Ala. in Birmingham*, 706 F.2d 1205, 1210 (11th Cir. 1983); *see also Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (use of current rates warranted because compensation received after services are rendered does not have equivalent dollar value). Current rates are especially important here, where the case has spanned more than three years and has adversely impacted the firm's opportunities and liquidity. (Arenson Decl., ¶¶ 51-52.)

4. **Plaintiffs' Voluntary Reductions Are More than Sufficient.**

As set forth above, although the hours Plaintiffs actually spent prevailing in this case are reasonable, Plaintiffs have voluntarily reduced the time for which they are seeking compensation in an exercise of reasonableness and discretion. Plaintiffs' voluntary reductions obviate the need for the Court to reduce the hours more. *See, e.g., Caruso v. Peat, Marwick, Mitchell & Co.*, 779 F. Supp. 332, 335 (S.D.N.Y. 1991) (accepting voluntary 10% reduction for two of the six years billed); *Allende*, 783 F. Supp. 2d at 515 (reducing legal fees by 7%); *Top Banana L.L.C. v. Dom's Wholesale & Retail Ctr., Inc.*, No. 04 CV 2666 (GBD) (AJP), 2008 WL 4925020, at *2 (S.D.N.Y. Nov. 10, 2008) (adopting Magistrate Judge Peck's recommendation to reduce attorney hours billed by 5% to eliminate performance of paralegal-type work and duplicative charges and further reducing the recommended award by approximately 4.25%).

5. Public Policy Favors Compensating Plaintiffs' Counsel Adequately Because Counsel Undertook Numerous Risks

It is important to adequately compensate lawyers who take wage and hour cases, especially high-risk, low-reward cases like this one. *See Prasker v. Asia Five Eight LLC*, No. 08 Civ. 5811 (MGC), 2010 WL 476009, at *6 (S.D.N.Y. Jan. 6, 2010) ("Adequate compensation for attorneys who protect wage and hour rights furthers the remedial purposes of the FLSA and the NYLL."). Such adequate compensation is consistent with the FLSA's purpose of eliminating "labor conditions detrimental to the maintenance of the minimum standard living" of workers through private lawsuits and "insur[ing] effective access to the judicial process" by removing the significant barrier of paying legal fees and costs out of pocket. *United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Ass'n, Local 307 v. G&M Roofing & Sheet Metal Co.*, 732 F.2d 495, 501-02 (6th Cir. 1984) (internal quotations omitted). Fee shifting provisions "encourage members of the bar to provide legal services to those whose wage claims might otherwise be too small to justify the retention of able, legal counsel. But for the separate provision of legal fees, many violations … would continue unabated and uncorrected." *Sand v. Greenberg*, No. 08 Civ. 7840 (PAC), 2010 WL 69359, at *9 (S.D.N.Y. Jan. 7, 2010). "Attorneys who fill the private attorney general role must be adequately compensated for their efforts. If not, wage and hour abuses would go without remedy because attorneys would be unwilling to take on the risk." Prasker, 2010 WL 476009, at *6; *see also Allende*, 783 F. Supp. 2d at 511 ("the award of attorneys' fees ... encourages the vindication of Congressionally identified policies and rights.").

6. No "Proportionality" Concept Applies.

Defendants may argue that the Court should reduce Plaintiffs' fee award because it approaches the monetary value of the settlement award to the Plaintiffs. This would be contrary to the law. It is "of no matter" that that Plaintiffs' lodestar amount is nearly equal to the amount of their recovery. *Allende*, 783 F. Supp. 2d at 511. A fee award should not be compared to the amount of damages awarded. *Cowan v. Prudential Ins. Co. of Am.*, 935 F.2d 522, 526 (2d Cir. 1991); *DiFilippo v. Morizio*, 759 F.2d 231, 235 (2d Cir. 1985) (reversing district court's decision to reduce the lodestar figure because of the low damages award). "[T]he unique nature of a claim under FLSA renders attorneys' fee requests that exceed judgment awards by multiples not uncommon." *Roussel v. Brinker Int'l, Inc.*, No. H-05-3733, 2010 WL 1881898, at *11 (S.D. Tex. Jan. 13, 2010) (awarding attorneys' fees six times the amount of the judgment in a FLSA case). (Estreicher Decl., ¶ 10.)

Applying a proportionality restriction would also ignore the value of the changes in the Car Wash Defendants' payroll practices that have been implemented as a result of this lawsuit. Under the control of the Chapter 11 Trustee, the Car Wash Defendants now pay all non-exempt employees at least the current statutory minimum wage, and compensate those employees at time-and-a-half for all hours worked over forty in a given week. Further, the Car Wash Defendants now issue wages to their employees through a payroll check, with all necessary deductions and withholdings. These changes were implemented as a result of this FLSA Action. *See* Goldstein Decl., ¶ 19. Such changes add to the value of the settlement. *Morris v. Eversley*, 343 F. Supp. 2d 234, 246 (S.D.N.Y. 2004) (Chin, J.) ("the degree of monetary success … is only one factor to be considered. Courts must also consider whether the plaintiff has achieved some other measure of success" such as equitable or declaratory relief).

Given Ms. Longobardi's and Mr. Arenson's backgrounds and years of experience, ADK's rates of $500 per hour for partners and counsel and of $125 for paralegal-equivalent time fall well within the accepted rates for attorneys of commensurate skill in bringing and enforcing employment cases within this jurisdiction. Thus, the rates charged by ADK are reasonable.

C. ADK's Costs Are Reasonable

ADK's costs in the FLSA Action and in the Bankruptcy Proceedings consist of filing fees; service of process costs; deposition and transcript costs; copying costs for document productions; deposition exhibits and court exhibits; messenger and FedEx costs; translators for use and depositions and client conferences; independent medical examination and expert report, and transportation expenses. Such costs are routinely approved. *See, e.g. Reichman v. Bonsignore, Brignati & Mazzotta P.C.*, 818 F.2d 278, 283 (2d Cir. 1987) (internal quotation marks and citations omitted); *see also LeBlanc-Sternberg*, 143 F.3d at 763 (abuse of discretion not to award plaintiff reasonable out-of-pocket costs). Plaintiffs' litigation costs and disbursements of $________ are detailed in Exhibits A and B to the Longobardi Declaration.

D. Plaintiffs Are Entitled to Recover Their Fees and Costs Until the End of This Matter.

Under the well-settled law of the Second Circuit, Plaintiffs are entitled to recover all of their reasonable fees and costs for the entire litigation until it is over. *Perez v. Westchester Cnty. Dep't of Corr.*, 587 F.3d 143, 156 (2d Cir. 2009) (remanding for district court to determine fees on fees); *Weyant v. Okst*, 198 F.3d 311, 316 (2d Cir. 1999) (plaintiffs entitled to recover fees for post-judgment motions and time spent on fee application). Plaintiffs' time records, current through March 30, 2015, include some of the time spent recovering fees, but does not include all of the time that will be spent concluding this matter, including submitting reply papers on this application, possibly arguing this motion before the Court, monitoring the settlement process, answering Plaintiffs' questions, assisting in administration of the settlement payment, participating in the bankruptcy proceedings to the extent necessary to complete the administration of the settlement payment, and otherwise ensuring that Defendants live up to their obligations. Plaintiffs respectfully reserve the right to file a supplemental fee application.

IV. CONCLUSION

ADK spent three years heavily litigating this action without compensation. Plaintiffs seek $1,404,456.23 in fees and $113,594.85 in costs. The fee request represents a more than 8% reduction from the original amounts actually billed in this case. Fees have been calculated by multiplying the reduced number of hours spent on the case, as evidenced by contemporaneous records, with the hourly rates actually charged to paying clie nts.

Accordingly, Plaintiffs respectfully request this Court grant this application for a combined award of **$1,518,051.08** for statutory attorneys' fees and expenses under the FLSA and the NYLL, in full, and request that the Court grant such further relief as it deems appropriate.

Dated: New York, New York
March 30, 2015

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